MONTANA LEGISLATIVE HISTORY

Chapter 279 19 83

Bill H 501 S _____ Original bill & history ✓ C

H. Committee on Judiciary ✓			S. Committee on Judiciary		
Hearing Date(s)	2-11	✓ C	Hearing Date(s)	3/15	✓ C
		C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2ND READING: 03/12/83 AYES: 46; NAYS: 0
3RD READING: 03/15/83 AYES: 48; NAYS: 0

RETURNED TO HOUSE: 03/15/83

TRANSMITTED TO GOVERNOR: 03/21/83
SIGNED: 03/23/83, CHAPTER 219

HB 499 -- ELLISON -- TO ELIMINATE CONFLICTS OF INTEREST FOR A COUNTY ATTORNEY IN SCHOOL MATTERS BY PROVIDING THAT A COUNTY ATTORNEY REPRESENT ONLY THE COUNTY SUPERINTENDENT OF SCHOOLS; TO PROVIDE THAT TRUSTEES OF A SCHOOL DISTRICT OR A COMMUNITY COLLEGE DISTRICT EMPLOY AN ATTORNEY OTHER THAN THE COUNTY ATTORNEY; AMENDING ....

INTRODUCED: 01/25/83
REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES: 01/25/83
HEARING: 2/4/83
REPORT: 02/04/83, DO NOT PASS
BILL KILLED: 02/07/83

HB 501 -- FARRIS, CHRISTIAENS, ECK, ET AL. -- TO AMEND SECTION ... TO ALLOW AN EXCEPTION TO THE PROHIBITION AGAINST EMPLOYMENT DISCRIMINATION ON THE BASIS OF MARITAL STATUS IN CERTAIN CIRCUMSTANCES.
BY REQUEST OF: THE HUMAN RIGHTS COMMISSION

INTRODUCED: 01/25/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/25/83
HEARING: 2/11/83
REPORT: 02/12/83, DO PASS, AS AMENDED
2ND READING: 02/15/83, DO PASS AYES: 82; NAYS: 7
3RD READING: 02/17/83, DO PASS AYES: 92; NAYS: 6

TRANSMITTED TO SENATE: 2/17/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/18/83
HEARING: 3/15/83
REPORT: 3/15/83, BE CONCURRED IN
2ND READING: 03/17/83 AYES: 46; NAYS: 2
3RD READING: 03/19/83 AYES: 47; NAYS: 2

RETURNED TO HOUSE: 3/19/83

TRANSMITTED TO GOVERNOR: 03/25/83
SIGNED: 03/29/83, CHAPTER 279

HB 502 -- PAVLOVICH, QUILICI -- EXTENDING THE TIME THAT JUDICIAL PROCEEDINGS ARE STAYED UPON TRANSMISSION OF ADDITIONAL EVIDENCE TO THE PUBLIC SERVICE COMMISSION AND ELIMINATING AUTOMATIC TRANSMISSION OF ADDITIONAL EVIDENCE ABSENT JUDICIAL RULING; AMENDING ....

INTRODUCED: 01/25/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/25/83
HEARING: 2/4/83
REPORT: 02/04/83, DO PASS, AS AMENDED
2ND READING: 02/07/83, DO PASS AYES: 88; NAYS: 1
3RD READING: 02/09/83, DO PASS AYES: 95; NAYS: 1

TRANSMITTED TO SENATE: 2/9/83

House BILL NO. 501

INTRODUCED BY Carol Harris Christiaens Erik Berg
McCann Richard E. Manning Grosfield Bachini
BY REQUEST OF THE HUMAN RIGHTS COMMISSION Howe
Harper

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 49-2-303, MCA, TO ALLOW AN EXCEPTION TO THE PROHIBITION AGAINST EMPLOYMENT DISCRIMINATION ON THE BASIS OF MARITAL STATUS IN CERTAIN CIRCUMSTANCES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, ~~marital status~~, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, ~~marital status~~, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly

HB501

construed."

-End-

JUDICIARY COMMITTEE

48Legislature

.ll No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
496	Requiring clerks of Dist. Crt. to issue passports in accordance with fed. law and to establish and collect fees for issuing passports.	1/25/83	Rep. Ellison	2/4/83	Do Not Pass	2/4/83
501	Allowing an exception to the prohibition against employment discrimination on the basis of marital status in certain circumstances	1/25/83	Rep. Farris	2/11/83	Do Pass As Amended	2/12/83
502	Extending the time that judicial proceedings are stayed upon transmission of additional evidence to the Public Service Com.; eliminating auto transmission of add. evidence	1/25/83	Rep. Pavlovich	2/4/83	Do Pass As Amended	2/4/83
507	Amend laws relating to the office hours and fees of justices' courts and to the commencement of actions in and removal of actions from justices' courts.	1/26/83	Rep. Hannah	2/9/83	Do Pass	2/9/83
516	Providing for city attorney reports to the Attorney General on cases involving declined prosecutions or the excl. rule; provide AG newsletter	1/26/83	Rep. Addy	2/7/83	Do Not Pass As Amended	2/8/83
524	Repeal Section 49-2-601, relating to criminal penalties for a violation of Human Rights Act.	1/27/83	Rep.Darko	2/7/83	Do Pass	2/7/83

have to present to the appropriations committee; there is no system currently in place for reporting these and nobody has recorded this, so the closest estimate is the attempts to locate.

REPRESENTATIVE ADDY noted that he thought that was relevant, because if in an attempt to locate you are at least going to look for the dental records. MR. MAYNARD stated that the attempts to locate are recorded on the teletype and they are oftentimes located; and whether 60 per cent of those people are located or show up the next day or a week later, or 90 per cent or 10 per cent, those are the figures that they just don't have because there are no records.

REPRESENTATIVE ADDY asked if this wouldn't put a tremendous administrative burden on a local law enforcement agency when you are talking about 680 some cases and to find out which dentist the person used and to go and get your dental records and send them in. MR. MAYNARD responded that he thought the bill provides that it puts that burden on the person reporting the missing person.

REPRESENTATIVE CURTISS wondered how much time has been spent in the past in efforts to identify missing persons, both within the attorney general's office and in the local enforcement agencies - it would seem to her that this would constitute a real saving in some areas. MR. MAYNARD believed that this was an excellent observation that the people who currently have to do this on a local level have to call 56 counties; they have to call as many police and sheriff stations as they can think of and then just pull names out of a hat or call to other states; and this puts it in a central depository.

There were no further questions or comments and the hearing on this bill was closed.

HOUSE BILL 501

REPRESENTATIVE FARRIS, District 41, Great Falls, stated that this bill was introduced at the request of the Human Rights Commission following a court decision which basically rearranges and allows for marital status to be

viewed in a different way than it has been in the past. She passed out to the committee some amendments to the bill. See EXHIBIT I.

RAYMOND BROWN, Administrator of the Human Rights Division of the Department of Labor and Industry, gave a statement explaining this bill. See EXHIBIT J.

LEROY SCHRAMM, Chief Legal Counsel for the University System, said that the most important thing that this bill does, in their opinion, is that it reinstates the neopotism law that was wiped out by the court decision; or, in fact, a subsequent attorney general's opinion, which, in effect, said that the neopotism law can no longer be enforced as it applies to people related by marriage. He emphasized that they support the bill wholeheartedly and the amendments that were passed out are absolutely essential.

CHIP ERDMANN, representing the Montana School Boards Association, testified that they would like to endorse Mr. Schramm's comments; and he commented that they run into this quite often in school districts; and they feel that this bill would, in their interpretation, almost nullify the attorney general's opinion; and would given them a uniform policy that they can deal with.

There were no further proponents and no opponents.

REPRESENTATIVE FARRIS closed.

REPRESENTATIVE ADDY noted that marital status, to him, was whether you are married, single or divorced; and what they are saying is that the Human Rights Commission and the Montana Supreme Court have interpreted marital status as also to whom you happen to be married; and he thought that was a little beyond the common meaning of that phrase. MR. BROWN read to the committee basically what the court said.

REPRESENTATIVE ADDY said that if they have two people working in business - one is the manager and one is the employee - and the manager is stealing money and engaging in kick-back schemes with the employees, it would be illegal discrimination to fire the wife.

ANNE McINTYRE, Staff Attorney for the Human Rights Commission, replied that the issue would be whether the wife is guilty of the same misconduct as the husband in her employment; and she is aware of the case to which he refers; and it is her understanding that the finding in that case was that the wife was not engaged in any sort of misconduct with regard to her employment and, therefore, it would be discrimination to fire her because of the misconduct of her husband.

REPRESENTATIVE ADDY indicated that he thought the finding was that she was engaged in those activities, but the court was not aware of it until after they had already made a decision to fire her, although they didn't actually fire her until they knew about it.

REPRESENTATIVE JENSEN said that he currently understands that the superintendent of the school district is married; his spouse is a teacher, who does not practice in that same district; and he wondered if this is current practice. MR. ERDMANN replied that, under the current interpretation of the supreme court and the attorney general's interpretation, there would be nothing that you could do to stop that practice; the teacher can teach anywhere.

REPRESENTATIVE JENSEN asked what is your current practice. MR. ERDMANN replied that currently we say that you cannot commit any discrimination in employment at all, at least on marital status; and that is what they tell the districts.

REPRESENTATIVE JENSEN asked if current practice in the school districts of the state reflect adherence to the law or to the prior concept. MR. ERDMANN responded that it may well reflect adherence to the prior concept; sometimes word of something like this takes awhile to get out; and people are use to dealing with it one way; and that is how they are dealing with it. He indicated that they have put out the information that they cannot discriminate on that basis.

REPRESENTATIVE JENSEN asked if this bill would allow or require the districts to prohibit that wife from teaching in that district where the superintendent or other administrator were employed, or would it be on the basis of some reasonable relationship. MR. ERDMANN answered that it would be his interpretation of some reasonable relationship; that is why the change is made in the lower section of the law; if there was no direct relationship between the superintendent and the spouse, absolutely prohibiting employment would be unreasonable; if you put her to work in his office, that may be a reasonable prohibition; and that is something that you may want to avoid. They feel that this bill addresses that and makes it much more workable.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 589

REPRESENTATIVE SCHYE, District 4, Glasgow, stated that this bill was introduced at the request of the Valley County County Attorney, and has to do with a conflict in the codes; and this bill removes a statutory conflict with respect to charging certain costs to convicted defendants. He presented to the committee copies of the codes relating to this bill and copies of a letter from David Nielsen, Attorney at Law in Glasgow. See EXHIBITS K and L.

There were no proponents and no opponents.

REPRESENTATIVE SCHYE closed.

There were no questions and the hearing on this bill was closed.

EXECUTIVE SESSION

HOUSE BILL 589

REPRESENTATIVE JENSEN moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE ADDY. The motion carried unanimously.

REPRESENTATIVE KEYSER said that until bodies are found or until some person is found, that is the time when dental records would be used; up until that time, there is a continuation in looking for the people, but until someone is found, how can you do any comparison until you find the person.

REPRESENTATIVE SPAETH explained about the only form of identification right now is finger prints; many times there are many people who do not have finger prints on file anywhere; you have a good chance with males because they have been in the armed forces or something like that; but there are a quarter of a million people who are missing each year and a lot of them are younger kids, who are hard to identify if they don't want to be and this is a second backup form; other states have adopted this and he thinks that ten years from now, dental records will be used in the same way that finger prints are being used now.

A vote was taken on the motion to DO PASS AS AMENDED. The motion carried unanimously.

HOUSE BILL 501

REPRESENTATIVE FARRIS moved that this bill DO PASS. REPRESENTATIVE KEYSER seconded the motion.

REPRESENTATIVE FARRIS moved the adoption of the amendments. See EXHIBIT I. The motion was seconded by REPRESENTATIVE ADDY.

REPRESENTATIVE FARRIS advised that the amendments make it clear that this is permissive; that is,that the burden of demonstrating that marital status is a bona fide occupational requirement is on the employer rather than the employee.

REPRESENTATIVE ADDY indicated that this would allow the status quo to exist the way it is.

The motion carried unanimously.

REPRESENTATIVE FARRIS moved that the bill DO PASS AS AMENDED. The motion was seconded by REPRESENTATIVE IVERSON.

The motion carried with REPRESENTATIVE JENSEN voting no.

HOUSE BILL 220

REPRESENTATIVE HANNAH moved that this bill be taken off the table. The motion was seconded by REPRESENTATIVE IVERSON. The motion carried unanimously.

REPRESENTATIVE HANNAH presented to the committee some proposed amendments to this bill. He explained that these amendments move this to a different section from section 70-24-421 to section 70-24-427.

REPRESENTATIVE HANNAH moved that this bill DO PASS. REPRESENTATIVE KENNERLY seconded the motion.

REPRESENTATIVE HANNAH moved the adoption of the amendments. The motion was seconded by REPRESENTATIVE KEYSER.

REPRESENTATIVE FARRIS asked how does the court know that the renter has the rent in his possession.

REPRESENTATIVE HANNAH replied that the new language in the amendment, "If, in an action filed pursuant to (1), the pleadings show," he is assuming that the court has the right to ask questions and check things out to find out whether or not that person does have funds.

REPRESENTATIVE FARRIS said if she had a disagreement with her landlord and instead of paying the rent, she placed it in an account, would the money go from the bank to the court, or the court could take possession of the bank book.

REPRESENTATIVE HANNAH replied that he felt the court could do whatever they wanted to; the reason for the bill is that when the landlord or the tenant controls the money,

STANDING COMMITTEE REPORT

February 12, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 501

~~First~~ reading copy (White Color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 49-2-303, MCA, TO ALLOW AN EXCEPTION TO THE PROHIBITION AGAINST EMPLOYMENT DISCRIMINATION ON THE BASIS OF MARITAL STATUS IN CERTAIN CIRCUMSTANCES."

Respectfully report as follows: That HOUSE Bill No. 501

BE AMENDED AS FOLLOWS:

1. Title, line 5.
Following: "AMEND"
Strike: "SECTION"
Insert: "SECTIONS"

2. Title, line 6.
Following: "49-2-303"
Insert: "AND 49-3-103"

3. Page 3, following line 1.
Insert: "Section 2. Section 49-3-103, MCA, is amended to read: "49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer: (1) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors DOXXXSx other than age;

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

February 12, 1983

(2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan which is not a subterfuge to evade the puposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(3) from discharging or otherwise disciplining an individual for good cause.""

AND AS AMENDED
DO PASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

Ex. 5, 6, + C
HB 501 + 660
2/11/83

HUMAN RIGHTS COMMISSION

STATE OF MONTANA

TED SCHWINDEN, GOVERNOR
(406) 449-2884

ROOM C-317, COGSWELL BUILDING
HELENA, MONTANA 59620

February 11, 1983

The Honorable Dave Brown, Chairman
Judiciary Committee
House of Representatives
Capitol Station
Helena, MT 59620

Dear Chairman Brown:

House Bills 501 and 660 are before this committee today at the request of the Montana Human Rights Commission.

The Commission has requested Raymond D. Brown, Administrator and Anne L. MacIntyre, Staff Attorney to speak in support of these bills on behalf of the Commission.

Thank you for your consideration.

Sincerely,

John Frankino

John Frankino
Chairman
Montana Human Rights Commission

JF/tg

WITNESS STATEMENT

Name Anne MacIntyre Committee On Judiciary

Address Room C-317, Cossaell Bldg St. Capitol Date 2/11/83

Representing Human Rights Comm Support ✓

Bill No. HB501 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

Exhibit I
HB 501
2/11/83

Proposed Amendment to House Bill 501 (Introduced Bill)

Title, line 5 and 6
Following: "AMEND"
Strike: "Section 49-2-303, MCA"
Insert: "Sections 49-2-303 and 49-3-103, MCA"

Page 3
Following: line 1
Insert: "Section 2. Section 49-3-103, MCA, is amended to read:
"49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer:

(1) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(3) from discharging or otherwise disciplining an individual for good cause." "

EXHIBIT J
HB501
2/11/83

POSITION STATEMENT OF THE HUMAN RIGHTS COMMISSION IN SUPPORT OF ITS PROPOSED BILL TO PROVIDE AN EXCEPTION TO THE LAWS PROHIBITING DISCRIMINATION IN EMPLOYMENT ON THE BASIS OF MARITAL STATUS WHEN THE REASONABLE DEMANDS OF THE POSITION REQUIRE A MARITAL STATUS DISTINCTION.

In May, 1981, the Montana Supreme Court decided a case which interpreted the Montana Human Rights Act's prohibition against marital status discrimination, Thompson v. Board of Trustees, School District No. 12. The case involved a nepotism policy adopted by a school board which provided that a school administrator employed in the school district could not also have a spouse employed with the district. The court held that the term "marital status" includes the identity and occupation of one's spouse as well as the state of being single, married, divorced, widowed, and so on. The Court also held that the statute did not provide for any exceptions to the prohibition of discrimination. In view of the broad construction of the term "marital status" adopted by the Court, the Commission believes that some limited exceptions to the prohibitions of marital status discrimination in employment should exist, for example, in situations where an employee audits the work of another employee or in the case of governmental employment, where nepotism is prohibited by law. The language of the proposed bill is self-limiting because of the language of Section 49-2-402, MCA, which requires the word "reasonable" as used in Chapter, Title 49, to be strictly construed.

HB 501
Exhibit
2/11/83

POSITION STATEMENT OF THE HUMAN RIGHTS COMMISSION IN SUPPORT OF ITS PROPOSED BILL TO ESTABLISH A PROCEDURE BY WHICH AN INDIVIDUAL ALLEGING A VIOLATION OF THE HUMAN RIGHTS ACT MAY ELECT TO PURSUE A COMPLAINT EITHER BEFORE THE COMMISSION OR IN DISTRICT COURT.

Title VII of the Civil Rights Act of 1964 provides that an individual alleging a violation of the Act must file a complaint with the Equal Employment Opportunity Commission. After the Complaint has been investigated by the Commission, the Commission issues a "right to sue" letter, authorizing the complainant to file a lawsuit in U.S. District Court. This proposed bill would establish a similar procedure for complaints alleging a violation of the Montana Human Rights Act.

There are several reasons the Commission proposes this legislation. First, many complainants who are represented by counsel from the outset would prefer to pursue their complaints in court rather than at an administrative hearing. Secondly, because of the inadequate funding of the Commission, the number of cases awaiting hearing is large and growing. While the number is not large compared to the number of cases which are resolved by the Commission staff through investigation and conciliation prior to hearing, it does contribute to the Commission backlog. Furthermore, in many cases, damages continue to accrue while cases are awaiting hearing and this seems particularly inequitable to Respondents.

WITNESS STATEMENT

Name Chip Eedmann Committee On H Jud.

Address Helena Date 2/11/83

Representing MT School Bd Assoc Support ✓

Bill No. HB 501 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This bill would partially restore the nepotism statute dealing with public employees.
2. It would institute a "reasonable" basis for the nonhiring of a spouse
3. We feel this would provide a much needed change in this area.
4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

Name Raymond D. Brown Committee On Judiciary

Address Cogswell Rd Date 2/11/83

Representing Mont Human Rts Comm Support ✓

Bill No. 501 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Prepared statement left with sec.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

Name LeRoy H Schramm Committee On Judiciary

Address 1000 9th Date 2-11-83

Representing MT. Univ. System Support X

Bill No. H.B. 501 Oppose

Amend X

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

48th LEGISLATIVE SESSION

COMMITTEE ON Senate Judiciary

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO NOT DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
415	2-8-83	3-22-83	3-22-83					3-22-83	
416	3-2-83	3-22-83	3-22-83						3-22-83
424	2-15-83		REFERRED TO STATE ADMINISTRATION						
427	2-15-83		REFERRED TO STATE ADMINISTRATION						
429	2-9-83	3-11-83	3-11-83					3-11-83	
433	2-9-83	3-3-83	3-3-83				3-3-83		
438	3-2-83	3-18-83	TABLED						
452	2-7-83	2-11-83	2-17-83					2-17-83	
467	2-21-83	3-18-83	3-19-83				3-19-83		
481	2-9-83	3-3-83	3-3-83				3-3-83		
489	2-17-83	3-14-83	3-14-83				3-14-83		
501	2-18-83	3-15-83	3-15-83				3-15-83		
502	2-10-83	3-8-83	3-8-83				3-8-83		
505	3-1-83	3-14-83	3-14-83				3-14-83		
507	2-15-83	3-11-83	3-11-83					3-11-83	
512	2-11-83	3-7-83	TABLED						

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 15, 1983

The forty-third meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 15, 1983 at 10:00 a.m. in Room 325, State Capitol.

ROLL-CALL: All members were present.

CONSIDERATION OF HOUSE BILL 584: Representative Hannah, House District #67, principle sponsor of the bill, stated that he sponsored this bill on behalf of the Task Force on Corrections. He said that this bill clarifies the basic language. He stated that the bill increases the number of aggravating circumstances and has the effect of expanding the areas that we have on the books where the death penalty may be imposed. He said that in Line 6 of the Title, the key word is where it says "may".

There being no further proponents, the hearing was opened to the opponents.

OPPONENTS: Cathy Campbell, representing the Montana Association of Churches, spoke in opposition to this bill. She said the association is opposed to HB 584 because it is opposed to the death penalty. The Montana Association of Churches has looked at the issue of capital punishment in some depth and has come to the conclusion that it opposes it. Ms. Campbell also submitted written testimony. (Exhibit No. 1).

Senator Galt asked if county jails had been purposefully eliminated from "correctional facility" and Representative Hannah answered yes, saying we are dealing with different individuals in county jails who may be in there for a short time. The feeling was that in a state correctional facility inmates have nothing to loose by killing another inmate or another guard. We can justify the need for additional penalties for these inmates.

Senator Turnage asked John Maynard, what effect might the bill have on handling appeals of condemned persons. Mr. Maynard replied, that he didn't think this bill would have any effect. The aggravating circumstance that has been utilized in Montana, the only one that might have an effect, is No. 3 - by means of torture.

There being no further opponents, the hearing on HB 584 was closed.

CONSIDERATION OF HOUSE BILL 501: Representative Carol Farris, of House District No. 41, and sponsor of the bill, stated that the bill was introduced at the request of the Human Rights Commission. It implements a Montana Supreme Court ruling holding that marital status discrimination is unlawful discrimination. What it will do is it would allow employers to say he doesn't want two members of the same family.

PROPONENTS: Raymond Brown, representing the Montana Human Rights Commission, said that the language of the proposed bill is self-limiting because of the language of Section 49-2-402, MCA, which requires the word "reasonable" as used in Chapter, Title 49, to be strictly construed. He also submitted written testimony (Exhibit 2.

Mr. LeRoy Schramm, Chief Legal Counsel of the Montana University System, stated that SB 179 introduced by Senator Stimatz and this bill are worded slightly differently but the effect is almost identical. If you are a public official, you are prohibited by nepotism status of hiring your son or daughter. If you refuse to hire your son-in-law or daughter-in-law, it would be violating the civil rights law. If you refused to hire your spouse, it would be violating the State Human Rights Act. Your son or daughter are nc related to you because of marital status. When you get to in-laws you get into nepotism statute. Once at the Havre campus and once at Montana Tech, a supervisor hired a spouse and the other his son-in-law, and the Commissioner's office refused to allow that. He said the Commissioner urges the Committee to pass the bill.

Chip Erdman, representing the Montana School Board Association, said that HB 501 will allow more consistency in this area.

There being no further proponents, the hearing was closed on HB 501.

CONSIDERATION OF HOUSE BILL 524: Representative Paula Darko, District #22, principle sponsor of the bill, advised that the bill was submitted at the request of the Human Rights Commission. She said it repeals Section 49-2-601 and submitted written testimony. (Exhibit 3).

Raymond Brown, Administrator of the Human Rights Commission, said that the Commission believes that the enforcement of the Human Rights Act is properly a matter for civil, not criminal, jurisdiction and therefore, recommends the repeal of Section 49-2-601, MCA. He submitted written testimony. (Exhibit 4).

There being no opponents, the hearing was closed on HB 524.

DISPOSITION OF HOUSE BILL 501: A motion was made by Senator Mazurek that House Bill No. 501 BE CONCURRED IN. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 524: A motion was made by Senator Mazurek that House Bill 524 BE CONCURRED IN. After brief discussion, the motion was withdrawn.

DISPOSITION OF HOUSE BILL 584: A motion was made by Senator Crippen that HOUSE BILL 584 Be Tabled. The motion carried unanimously.

FURTHER CONSIDERATION OF HB 825: Senator Turnage said that House Bill 825 is on second reading and the Committee either has to have it re-referred to the committee or handle it on the floor.

Ward Shanahan, representing the Northern Tier Pipeline, said the bill is essentially re-writing the show-cause chapter. On page 9

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 3/15/83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
BETTY WING	MISSOULA CO TASK FORCE FOR PREVENTION OF DRUNK DRIVING	HB 808	X	
Michael Wood	"	HB 808	X	
Chip Erdmann	MT School Bd Assoc	HB 501	X	
Lacy Brown	Mont H.R. Comm	HB 501 HB 524	X	
Cathy Campbell	Mt Assn Churches	HB 584		X
Ce " "	Mt Assn Churches	HB 808	X	
Le Roy H. Schramm	Mt. Univ. System	HB. 501	X	
[illegible]	Highway Safety - Justice	HB 805	X	
Ward Shanahan	Northern Tier Pipeline			
Larry Majerus	Mt Veh. Div	HB 808	X	

(Please leave prepared statement with Secretary)

Raymond Brown
Exhibit 2

POSITION STATEMENT OF THE HUMAN RIGHTS COMMISSION IN SUPPORT OF ITS PROPOSED BILL TO PROVIDE AN EXCEPTION TO THE LAWS PROHIBITING DISCRIMINATION IN EMPLOYMENT ON THE BASIS OF MARITAL STATUS WHEN THE REASONABLE DEMANDS OF THE POSITION REQUIRE A MARITAL STATUS DISTINCTION.

In May, 1981, the Montana Supreme Court decided a case which interpreted the Montana Human Rights Act's prohibition against marital status discrimination, Thompson v. Board of Trustees, School District No. 12. The case involved a nepotism policy adopted by a school board which provided that a school administrator employed in the school district could not also have a spouse employed with the district. The court held that the term "marital status" includes the identity and occupation of one's spouse as well as the state of being single, married, divorced, widowed, and so on. The Court also held that the statute did not provide for any exceptions to the prohibition of discrimination. In view of the broad construction of the term "marital status" adopted by the Court, the Commission believes that some limited exceptions to the prohibitions of marital status discrimination in employment should exist, for example, in situations where an employee audits the work of another employee or in the case of governmental employment, where nepotism is prohibited by law. The language of the proposed bill is self-limiting because of the language of Section 49-2-402, MCA, which requires the word "reasonable" as used in Chapter, Title 49, to be strictly construed.